IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

ORDER

Hemchand Versus State and Ors.

S.B.CRIMINAL REVISION NO. 307/2000
against the Order dt. 7.4.2000 passed
by Additional Sessions Judge, Phalodi
in Sessions Case No. 3/1999.

Date of Order : 16/2/2005

PRESENT

HON'BLE MR. H.R.PANWAR, J.

Mr. J.S.Choudhary,for the petitioner
Mr. Prabhat Ojha for the respondents No.2 to 7
Mr. Narendra Moolchandani, P.P.

BY THE COURT:-

This criminal revision petition under Section 397/401 Cr.P.C. is directed against the order dated 7.4.2000 passed by Additional Sessions Judge, Phalodi in Sessions Case No. 3/99 whereby the Additional Sessions Judge discharged the accused respondent No.2 Madanchand and respondent No.4 Kanhaiyalal from the offences u/ss. 148, 323, 452, 427 and 395/149 IPC. The Additional Sessions Judge also discharged the accused respondent No.3 Manish, No.5 Ghishulal, No.6 Sunil and No.7 Pradeep from the offences under Sections 148 and 395/149 IPC; however, maintained the order of the Chief Judicial Magistrate, Phalodi taking cognizance

of the offence under Sections 323, 452 and 427 IPC and returned the record u/s 228 Cr.P.C. to the Additional Chief Judicial Magistrate, Phalodi for the trial of the case. Aggrieved by the order passed by the Additional Sessions Judge dated 7.4.2000, the complainant has filed the instant revision petition.

I have heard learned counsel for the petitioner and public prosecutor appearing for the State as well as counsel appearing for the accused respondents. I have carefully gone through the order passed by the Additional Chief Judicial Magistrate taking cognizance against respondents No. 2 to 7 for the offence u/ss 148, 323, 452, 427 and Section 395 r/w Section 149 IPC. I have also carefully gone through the order passed by Additional Sessions Judge dated 7.4.2000. I have also carefully gone through the record of the trial court.

The first information report was lodged by the petitioner on 22.10.98 with the Police Station, Phalodi inter alia, alleging therein that at about 9-9.30 AM, accused respondents Kanhaiyalal, Gopal, Sunil, Madanchand, Manish @ Kalu, Pradeep entered in the house and started assaulting his wife Sobha. Respondent Sunil inflicted Lathi blow and other gave Kick and Fist blows to his wife Sobha. The maid servant Sonibai intervened and she was also assaulted

by the accused respondents. The accused respondents also snatched the Gold ornaments from Sobha. Thereafter, the accused persons came at his shop and also assaulted the complainant by kick and fist blows, and damaged the car etc. On this report, the investigation ensued. The police recorded the statement of injured eye witnesses Sobha and Smt. Sonibai and the other witnesses viz. Kiran, Suresh, Ratanlal, Ravindra and Om Prakash though they were not eye witnesses but reached the house of injured Sobha after the occurrence. After investigation, the police filed challan against the accused respondents for the offences under Sections 147, 452, 323 and 394 IPC. Without assigning any reason, the police did not file challan against the accused respondents for the offences under Section 395 IPC. However, learned Additional Chief Judicial Magistrate on challan being filed, after carefully perusing and examining the challan papers and the statement of the prosecution witnesses recorded by the police under Section 161 Cr.P.C., came to the conclusion that more than five persons formed the unlawful assembly and after preparation to cause hurt, entered the house of complainant and caused injuries to Sobha and Smt. Sonibai who intervened when Sobha was being assaulted by the accused respondents. The trial court also came to the conclusion that from the statement of victim

Sobha and the independent eye witness injured Sonibai, it is prima-facie established that the accused respondents robbed two gold bangles and one gold chain and therefore, the offence of dacoity is prima-facie appears to have been committed by the accused persons and took the cognizance against the accused respondents for the offences u/ss 148, 323, 427, 452 and 395/149 IPC. Since the offence under Section 395/149 is triable by a Court of Session, therefore, the case was committed to the Additional Sessions Judge.

The Additional Sessions Judge, without adverting to the evidence on record, in a cursory manner and without meeting out the prima-facie conclusion arrived at by the trial court, discharged Madanchand and Kanhaiyalal from the offences and accused respondents No. 3,5,6 and 7 were discharged from the offence under Section 395 r/w Section 149 IPC. The order passed by the Additional Chief Judicial Magistrate dated 23.3.99 is elaborate and well-reasoned order which was passed after taking into account the entire evidence made available on record by the investigating agency. Without assigning the convincing reasons, the learned Additional Sessions Judge discharged the accused respondents from the offences noticed above.

At the stage of framing charge, the Court has to see, on perusal of the material placed before it by the investigating agency, as to whether there is a ground to presume that accused committed the offence. In the instant case, victim Sobha, who suffered numerous injuries at the hands of the accused respondents, has categorically stated that all the accused respondents namely respondents No. 2 to 7 committed a house trespass with a preparation to cause hurt. She was assaulted and she suffered numerous injuries at the hands of the accused respondents. All the accused respondents participated in causing injuries to the victim and accused respondents Sunil and Gopal snatched two Gold Bangles and Gold Chain which were worn by victim Sobha along with Mangalsutra. The statement of victim Sobha is fully supported and corroborated by the statement of Smt. Sonibai, a maid servant. At the relevant time of occurrence she was in the house and finding Sobha being assaulted and robbed by the accused respondents, she intervened but she was also assaulted by the accused respondents. Her presence at the place of occurrence at least cannot be doubted at this stage. The other witnesses Smt. Kiran, Suresh, Ratanlal etc. also support and corroborate the statement of Sobha, the victim. Smt. Kiran stated that at 9.30 AM, Sobha was standing outside the house with bleeding from nose

who suffered the injuries. However, she stated that she has not seen the occurrence but she has taken care of injured Sobha after having suffered the injuries.

It is well settled law that at the time of framing of the charge, the evidence is not to be meticulously examined and marshaled and only a prima-facie conclusion has to be arrived at as to whether there is sufficient ground to presume that accused committed the offence. There being sufficient material, as noticed herein above, the trial court was justified in taking cognizance against the accused respondents. In this view of the matter, the order passed by the Additional Sessions Judge, Phalodi dated 7.4.2000 cannot be sustained and is liable to be set aside.

Consequently, the revision petition is allowed. The order impugned dated 7.4.2000 passed by the Additional Sessions Judge, Phalodi in Sessions Case No. 3/99 is hereby set aside and the order dated 23.3.1999 passed by the Additional Chief Judicial Magistrate, Phalodi in Criminal Case No. 123/99 is restored. The record of the trial court be returned forthwith. The stay petition also stands disposed of.

(H.R.PANWAR),J.

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